

FISCAL NOTE

HB 2240 - SB 2186

January 23, 2004

SUMMARY OF BILL: Establishes the regulatory framework for governing annual events operated for the benefit of a 501(c)(3) organization pursuant to Article XI, Section 5 of the Constitution of Tennessee.

The bill would require 501c(3) organizations to obtain a permit from the Secretary of State prior to conducting an annual event under Article XI, Section 5. At least 60 days, but not more than 120 days, prior to holding the annual event, the organization must file an application for a permit. The Secretary of State would issue the permit for the annual event if the organization satisfies the application requirements, pays the application fee and is a valid 501c(3) entity that has not conducted an annual event during the previous year. The Secretary of State shall establish a reasonable fee for annual event applications. Such fee shall be adequate to pay the cost to the state of the application process. Fees collected shall be used by the secretary to defray the cost of administering this act.

Persons denied a permit may request a hearing conducted in accordance with the Uniform Administrative Procedures Act. No later than 30 days after the event is held, the 501c(3) organization must file a report with the Secretary of State if such organization did not employ a professional fund raising event counsel or event manager in connection with the event. Failure to file the report or filing the report after the deadline would disqualify the organization from holding an annual event for a period of three years.

In order to act as a professional fund raising event manager for any 501c(3) organization, a person must complete an application, pay an annual registration fee of \$800 and submit a \$25,000 bond to be approved by the Secretary of State. To qualify to be registered as an event manager, the person must not have been convicted within the past five years of any violation of this bill or of any felony. A manager would have the responsibility to ensure that the manager's employees who work in conjunction with any annual event are registered and bonded. The annual registration fee for employees would be \$10.00. A professional fund raising event manager would be required to file a report for an annual event with the Secretary of State within 90 days after the event has been completed.

In order to act as a professional fund raising event counsel for any 501c(3) organization, a person must complete an application, pay an annual registration fee of \$250 and submit a \$25,000 bond to be approved by the Secretary of State.

The Secretary of State, upon its own initiative or complaint of any person, upon reasonable grounds, would be allowed to publicly or privately investigate any 501(c)(3) organization, manager, counsel or other person to determine whether there is a violation of the provisions of this act. The Secretary of State would be allowed to impose a civil penalty of not more than \$5,000 for any violation of this act. Any civil penalty would be subject to judicial review. Whenever it appears that any person has engaged or is about to engage in any act or practice constituting a violation of this act, the secretary would be allowed to bring certain an action through the Attorney General. Upon a showing of a violation of this act, the courts would be authorized to grant equitable relief.

Any intentional violation of the term of an injunction or order for other relief would be prima facie evidence of a violation of this act and would be punishable by a civil penalty of not less than \$10,000 for each violation. Any person who intentionally files false information required to be filed by the provisions of this act or intentionally fails to file any information required by the provisions of this act commits a Class E felony, punishable by one to six years in prison and a fine not to exceed \$50,000.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures:

\$42,500 One-Time FY04-05/Secretary of State

\$829,000 Recurring FY04-05/Secretary of State

\$39,000 One-Time FY05-06/Secretary of State

\$2,031,000 Recurring FY05-06/Secretary of State

\$2,500/Incarceration*

Increase State Revenues - \$116,000 FY04-05

\$512,000 FY05-06

Estimate assumes:

- The Secretary of State will establish a reasonable fee for annual event applications. Such fee will be adequate to pay the cost to the state of the application process. Fees collected shall be used by the Secretary to defray the cost of administering this act. The professional fund raising event manager will pay a fee of \$800 a year and the professional fund raising event counsel will pay a fee of \$250 a year.
- There are approximately 17,000 organizations (excluding private foundations) which hold themselves out as 501(c)(3) organizations in Tennessee according to the Internal Revenue Service 2002 Masterfile. The IRS estimates that approximately 5,000 of the 17,000 are required to annually file a Form 990 (the remaining 12,000 include churches and organizations with gross revenue not exceeding \$25,000 each taxable year and therefore not required to file the annual financial report).
- The cost estimate assumes 10% of the 17,000 organizations exempt under IRS section 501(c)(3) (1,700) will apply for approval to conduct approved forms of lottery games. The bill permits organizations to apply for approval to conduct an annual event after July 1, 2004.

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- FY04-05 estimates assume permit applications from 500 organizations, 25 counsel and 15 managers. Travel costs assume that three investigators will visit 350 out-of-area events at a daily rate of \$100. Rent estimate calculated at \$15/sq.ft. for the entire management/staff makeup. Equipment based on cost for three laptops, ten computers, seven printers, file cabinets, and office furniture. There will be 500 applicants submitting permit fees for first year operations. Assume 25% of counsel currently registered with the state to assist charities with fundraising activities will register for annual event and 50% of professional solicitors currently registered with the state will seek a permit to promote annual event for 501c(3) organizations. The provision prohibiting organizations from participating in annual event activities for three years for late-filed reports will reduce late-filed records.
- FY05-06 estimates assume 1,700 organizations will conduct annual event activities. Nine investigators will oversee 180 activities per year and three investigators will conduct investigations for civil penalties and criminal prosecutions. Assumes financial report filing by 1,700 organizations, 100 professional fund raising event counsel, and 100 professional fundraising event managers. Assigns regular in-house responsibilities to review 1,900 reports to two accountants and three accountants to conduct on-site audits, and to assist with investigations. Travel costs assume nine investigators will be on travel status 15 days per month for 12 months at a daily rate of \$100; and an additional three investigators and three accountants will each incur \$3,000 for on-site audits and investigations. This bill does not restrict participation to in-state 501c(3) organizations; therefore, second year revenue assumes increased filings by out-of-state organizations.
- Any cost to the District Attorneys General Conference to provide the necessary prosecutorial resources to deal with any infractions of the law is estimated to be not significant and can be handled with existing staff and budgeted resources.
- The fiscal impact from enactment of this bill is estimated to result in a maximum increase in state expenditures of \$2,500 for incarceration.* This estimate is based on one conviction every other year.

Details of this estimate are shown below:

FY04-05 Expenditures

Personnel costs (10 positions)	\$677,987
Travel	35,000
Rent	105,000
Equipment & furniture (one-time)	42,500
Training	1,500
Printing, supplies, communication	9,000
Total FY04-05	<u>\$870,987</u>

FY04-05 Revenues

501(c)(3) Charities (500 x \$125)	\$62,500
Professional fund raising event Counsel (25 x \$250)	6,250
Professional fund raising event Managers (50 x \$800)	40,000

Employees (150 x \$10)	1,500
Late fee assessment 20% of total filers x \$75 (3 mos. Late filed documents x \$25)	<u>5,625</u>
Total FY04-05	<u>\$115,875</u>

FY05-06 Expenditures

Personnel costs (24 positions)	\$1,716,604
Travel	180,000
Rent	105,000
Equipment(one-time)	38,600
Training	4,000
Printing, supplies, communication	<u>25,000</u>
Total FY05-06	<u>\$2,069,204</u>

FY05-06 Revenues

501(c)(3) Charities - new applicants (1,400 x \$125)	\$175,000
Renewals (fee based upon prior year revenue (150 x \$300)	45,000
(150 x \$400)	60,000
(200 x \$500)	100,000
Professional fund raising event Counsel (100 x \$250)	25,000
Professional fund raising event Managers (100 x \$800)	80,000
Employees (300 x \$10)	3,000
Late fee assessment 20% of total filers x \$75 (3 mos. Late filed documents x \$25)	<u>23,700</u>
Total FY05-06	<u>\$511,700</u>

**Section 9-4-210, TCA, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated for operating cost, in current dollars, shall be based upon the highest cost of the next 10 years, beginning with the year the additional sentence to be served impacts the correctional facilities population.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director